

**SUPREME COURT OF NIGERIA**  
4TH JUNE, 1996. SC. 37/1990  
**CORAM:- A. B. WALI, I. L. KUTIGI, E. O. OGWUEGBU,**  
**Y. O. ADIO, A. I. IGUH, JJSC.**

Y.O. OLAGUNJI ..... APPELLANT

AND  
ALIMI OYENIRAN & OTHERS ..... RESPONDENTS

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**APPEALS** - *Concurrent findings - Where justified and supported by evidence - They will not be altered.*

**CHIEFTAINCY MATTERS** - *Recommendations - Made by a commission in respect of a chieftaincy declaration - Whether binding on the government.*

**CHIEFTAINCY MATTERS** - *Fair hearing - Where a party has been heard by the commission of Inquiry - Whether he is to be heard again by the Executive Council - During its consideration of the Report.*

**EVIDENCE** - *Admission - Contents of a chieftaincy declaration - Where admitted in evidence - Whether there is need to tender it.*

**FACTS**

In 1957, there was a Registered Declaration under the Chiefs Law of Western Nigeria. The law is applicable in Osun State pertaining to Timi of Ede Chieftaincy. A Commission of Inquiry set up by the Government conducted an inquiry in respect of the said chieftaincy. The Government subsequently amended the 1957 Registered Declaration, which led to the introduction of a new family amongst the formerly existing ruling houses. The newly introduced family came before the family of the plaintiff/appellant in the order of rotation.

Being aggrieved, appellant instituted this action against the defendants seeking inter alia, to set aside the amendment to the 1957 Registered declaration. Appellant contended that failure of the Executive Council to give him a hearing before amending the 1957 declaration was a denial of fair hearing. Both the trial courts and the Court of Appeal dismissed the appellant's claim. He has further appealed to the Supreme Court raising 3 issues for determination which the Court narrowed down to 2.

### ***ISSUES FOR DETERMINATION***

1. (a) *Whether the Oyo State Executive Council could, as it did, in the given circumstance, amend the Timi of Ede Chieftaincy Declaration of 1957.*

2. (b) *Whether the appellant's family having appeared and testified before the Ademola Commission, could claim the right of being heard again by the Oyo State Executive Council before taking a decision on the Report submitted to it by the Ademola Commission, particularly when the decision taken by the Executive Council affected his family*

**HELD** (Unanimously dismissing the appeal per lead judgment of **WALI JSC**)

#### ***Concurrent findings***

1. I have myself carefully read through the printed record and the arguments presented by both sides, and have seen no reason to differ from the findings and conclusions reached by both the trial Court and the Court of Appeal in dismissing the appellant's case. The concurrent findings on both issues of fact and law raised in his case are justified as they are and well supported by the evidence. (p. 994 B)

#### ***Evidence - Admission***

2. Both the appellant and the respondents admitted in their respective pleadings, the contents of the 1979 Timi of Ede Chieftaincy Declaration. So in my view and in the present circumstance, the tendering in evidence of the Declaration itself is not necessary. What is admitted does not require any evidence to prove it. (p. 994 D)

#### ***Recommendations made by a chieftaincy commission of Inquiry***

3. The provisions of the Chiefs Law of Oyo State are clear on the role the Executive Council can play in making a chieftaincy Declaration or amending it. See s. 7(2) (b) and s. 25 of the Chiefs Law, 1978. The findings and recommendations contained in the Ademola Commission Report are not to be regarded as judicial decision having binding force on the Oyo State Executive Council, that is the Government. They are findings and recommendations upon which the government may act and in so acting, it is not to be expected that it will adopt them *in-toto*. (p. 994 E)

#### ***Where a party has been heard by the Commission of Inquiry***

4. The appellant's family was accorded hearing by the Ademola Commission of Inquiry. Their representatives gave evidence on the issue. It is therefore a misconception by the appellant to demand another hearing before

the Executive Council when it was considering the Ademola Commission Report, under the pretext of audi alteram partem or fair hearing. The Oyo State Executive was not expected to hear the appellant or any member of his family before deciding on Ademola Commission Report which resulted in amending the 1957 Timi of Ede Chieftaincy Declaration and replacing same by the 1979 Declaration. (p. 994 F)

## **NOTABLE POINTS OF INTEREST**

### **OGWUEGBU JSC**

#### ***1. Need to tell a person the case against him before an inquire***

It is true that before a person is subjected to an inquiry affecting his civil rights or property, then he should be told the case against him and be afforded a fair opportunity of answering it. The contention of the learned appellant's counsel was misconceived in that apart from being represented, the appellant and his family were heard at the Inquiry. It would be contrary to all known practice for the Executive Council of Oyo State to hear the appellant a second time before taking a decision one way or the other on the recommendations. (p. 995 G)

### **IGUH JSC**

#### ***2. Whether fair hearing was denied***

No doubt, the right to fair hearing is a fundamental constitutional right guaranteed by the 1979 Constitution of Nigeria, the breach of which, particularly in trials, naturally nullifies such proceedings. A hearing cannot be said to be fair if one of the parties is refused a hearing or denied the opportunity to be heard or present his case. In the present Commission of Inquiry, however, the plaintiff/appellant and the defendants/respondents, not only gave evidence, they were also legally represented. It cannot therefore be suggested that the appellant or the respondents were either not heard or afforded the opportunity of being heard or presenting their respective cases at the Inquiry. (p. 998 B)

#### ***3. Whether Government is bound to conduct chieftaincy inquiry***

In my view it will not matter whether or not an Inquiry is first conducted before the amendment is carried out by the Government. See Section 7 (2)(b) of the Chiefs Law. If however Government chooses to constitute an Inquiry to go into a chieftaincy declaration as provided by Section 25(1) of the law and make recommendations before it comes out with a final declaration, the report of such Inquiry is not a decision but recommendations upon which Government may act. I think the Oyo State Government at all

material times possessed definite powers to accept or reject the recommendations of the commission of Inquiry as, in its opinion, it considered fit and just. (p. 999 C)

**B REPRESENTATION**

Parties absent and not represented

**CASES REFERRED TO**

- C Duruyappale v. Fernando (1967) 2 A.C. 337-349; (1967) 2 All ER 155 at 155 to 157  
 Riale v. Balawin (1963) All ER 1  
 Buxton v. Minister of Housing (1961) Q.B.  
 The Queen v. Director of Audit (W.R.) (1961) All NLR 659  
 Ahiodun v. Adehin (1962) 1 NLR 550  
 D Solana v. Olusanya (1975) 6 SC 55  
 Gucas v. Jos Int. Breweries Ltd (1991) 6 N.W.L.R. (Part 199) 614 at 623  
 Mohammed v. Olawumni (1990) 2 N.W.L.R. (Part 133) 458

**E STATUTE & RULES REFERRED TO**

Supreme Court Rules 1985 O. 6 r. 8(6)  
 Chiefs Law of Oyo State Cap 21 1978 ss. 7 (2) (b), 25, 10(1)

**F LEAD JUDGMENT BY WALI JSC**

The plaintiff's claim as per his Writ of Summons is as follows:-

*"(1) Declaration that the Amendment made and registered in 1979, at Ibadan to the Registered Declaration of Custom relating to the Timi of Ede Chieftaincy is ultra vires, unconstitutional and contrary to natural justice.*

G *(2) Declaration that the correct custom relating to the aforesaid Chieftaincy is as declared in the registered declaration made in 1957.*

*(3) Injunction to restrain the Defendants, their servants or agent from acting pursuant to the purported Amended Declaration of 1979 with regard to the Timi of Ede Chieftaincy."*

Pleadings were ordered, filed and exchanged.

H In proof of the averments in the Further Amended Statement of Claim, the plaintiff called two witnesses. He did not testify himself, as he was said to be ill and admitted in hospital. After the evidence of the two witnesses, the plaintiff's case was closed. The defendants did not call any witness rested their case on that of the plaintiff.

After reviewing the evidence and the submissions of learned counsel on both sides with meticulous care and thoroughness, Sijuwade J, came to the following conclusion:-

*"From the foregoing, the plaintiff's action on all its legs must be and hereby dismissed with costs which I shall now proceed to assess."*

Aggrieved by the decision of the trial court, the plaintiff appealed against it to the Court of Appeal, Ibadan Division. The appeal was dismissed by the Court of Appeal with costs.

The plaintiff has now further appealed to this Court. Henceforth the plaintiff will be referred to as the appellant while the defendants as 1st, 2nd, 3rd and 4th respondents respectively. In compliance with the Rules of this Court, the appellant and the respondents' filed and exchanged briefs of argument.

In his brief, the appellant formulated the following issues for determination:-

*"2.1. The main issue involved in this Appeal is:*

*(1) Whether the Court of Appeal was right in upholding the decision of the trial Court that the Appellant was not entitled to be heard on the issue before the Government rejected the Recommendation of the Ademola commission of Inquiry.*

*2.2. Germane to the main issue for consideration are:*

*(i) Whether the failure of the Government to hear the Appellant before deciding to alter Ademola commission's finding did not constitute a breach of natural Justice thereby rendering subsequent proceedings on the issue null and void.*

*(ii) Whether there was any jurisdiction left in the Government in counsel to set in motion the machinery for amending the 1957 Registered Declaration since the Ademola commission of Inquiry which the executive set up found that it was in Order."*

The 1st respondent did not formulate issue in his brief but adopted the issues formulated by the appellant, while the 2nd 3rd and 4th respondents also reproduced in their joint brief the issues formulated by the appellant.

Before I go into the arguments advanced by the parties to this appeal, I consider it pertinent to state the brief facts involved in this case.

In 1957, there was a Registered Declaration under the Chiefs Law of Western Nigeria, now application in Osun State, pertaining to Timi of Ede Chieftaincy. Under that Declaration, there were five ruling houses entitled to succeed to the Ede Chieftaincy in the following rotational order

- (1) Agboran; (2) Oyefi; (3) Aroharan;  
 (4) Oduniyi and (5) Ajeniju.

Then in 1977 the government of Oyo State appointed a Judicial Commission of Inquiry under the chairmanship of Hon. Justice Adenekan Ademola, which will hereafter be referred to as Ademola Commission to review all disputed chieftaincy declarations throughout the state including the Timi of Ede chieftaincy declaration. Both families of the parties to the present action appeared before the Ademola Commission and testified through their accredited representatives. At the end of the inquiry the Ademola Commission submitted its report to the Oyo State Government.

In the report, the Ademola Commission made a finding that the claim by Laminisa Family to the Timi of Ede throne is justified, although they were not recognized by the 1957 Timi of Ede Chieftaincy Declaration as one of the families entitled to present a candidate for the rotational succession to the throne. The Ademola Commission recommended in its report the retention of status quo in the 1957 Timi of Ede Chieftaincy Declaration.

In 1979 when the government of Oyo State was considering the report, it accepted the Ademola Commission recommendation that the Laminisa Family is entitled to succeed to the Timi of Ede throne like any other qualified family contained in the 1957 Timi of Ede Chieftaincy Declaration and to that extent, amended the Declaration by including the Laminisa Family in the Declaration and placing it in the second place in the hierarchy of the rotational succession to the throne while pushing the appellant's family to the third position. The order of succession to the Timi of Ede throne as per the amended Declaration is now as follows:-

- (1) Agbonran Family
- (2) Laminisa Family
- (3) Oduniyi Family
- (4) Oyefi Family 'and
- (5) Ajeniju Family

Hence the present action by the appellant challenging the legality of the amendment by the Executive Council of the Oyo State Government.

On the day the appeal came up for hearing none of the parties or their counsel appeared in court, and so by virtue of Order 6 Rule 8(6) of the Supreme Court Rules, 1985 (as amended) the appeal was deemed as argued on the briefs filed, after satisfying ourselves that the parties were served with the hearing notices.

In support of the issues formulated from the grounds of appeal, the appellant presented the following arguments:-

(1) That the Oyo State Executive Counsel having delegated its power to amend the Timi of Ede Chieftaincy Declaration of 1957 to the Ademola Commission of Inquiry in accordance with sections 10 and 25 of the Chiefs Law, it was bound to follow the recommendations of that commission, and that when it decided to derogate from the recommendation, it was bound to adopt a fair procedure in arriving to a different view from that of the Commission. B

(2) That since the new stand of the Oyo State Executive Council unfavourably affected the appellant he had a right of being heard before the new finding by the Executive Council. C

(3) That the Executive Council having failed to afford hearing to the appellant, it violated his constitutional right to "fair hearing" which rendered the purported amendment of the 1957 Declaration by the 1979 Declaration null and void and of no legal effect.

(4) That the power vested in the Oyo State Executive Council is not a mere administrative power but a quasi judicial power and the Executive Council was therefore bound to act judiciously. D

Learned counsel finally submitted that the Court of Appeal was therefore wrong when it affirmed the findings of the trial court and dismissed the appeal. He urged this Court to allow the appeal, cited and relied on the following cases to buttress his arguments - Duruyappale v. Fernando (1967) 2 A.C. 337 - 349, (1967) 2 All ER 155 at 155 to 157; Riale v. Balawin (1963) All ER 1; Buxton v. Minister of Housing (1961) Q.B.; NEPA v. El-Fandi (1986) 3 NWLR (Pt. 32) 650 SC; Adigun v. Ali of Oyo State (1987) 1 NWLR (Pt. 53) 678 SC and Aiyetan v. Nifor (1987) 3 NWLR (Pt. 59) 48 SC. E F

On this his part, learned counsel for the 1st respondent contended that since the appellant was given hearing by the Ademola Commission, it could not be said that there was a breach of natural justice. He said it was a misconception for the appellant to compare the findings and recommendation of the Ademola Commission with litigation and to say that such findings and recommendation were binding on the Oyo State Government. G He submitted that it was the duty of the Oyo State Government to consider and deliberate on the Commission's Report and then take a decision without giving any hearing on the Report to the appellant and that it was acting within its power when, after considering the Report, it amended the 1957 Timi of Ede Chieftaincy Declaration by replacing it with the 1979 Declaration. He cited s. 7(1) and (2) of Oyo State Chiefs Law (Cap 23) of 1976: The Queen v. Director of Audit (W.R) 1961 All NLR 659; Merchant Bank Ltd. v. Minister of Finance (1961) NLR 598 and Ekundare v. Gover- H

nor-in Council (1961) All NLR 149, in support of his submissions. He said that the question of ousting the Government's jurisdiction in the matter does not therefore arise and cited in support the case of Abiodun & Ors. v. Adehin (1962) 1 NLR 550.

B Learned Counsel for the 2nd, 3rd and 4th respondents submitted that it is not the practice of any authority empowered to resolve a dispute while acting on the finding of a commission of inquiry to invite the parties again to a decision table before it decides which aspects of the finding are acceptable to it and that by virtue of s. 10 of the Chiefs Law (Cap 21) and C s.25(1) of the same Law, the Executive Council of Oyo State had the power to amend the Timi of Ede Chieftaincy Declaration with or without the finding and recommendation of any commission of inquiry. He also submitted that there was no breach of fair hearing or natural justice before the Declaration was amended since the appellant's family, through its representatives D appeared and testified before the Ademola Commission. He cited the case of Board of Education v. Rice (1911) AC 199. He urged this court to dismiss the appeal.

I think the main issues involved for resolving this appeal can be narrowed into:

E (a) Whether the Oyo State Executive Council could, as it did, in the given circumstance, amend the Timi of Ede Chieftaincy Declaration of 1957.

(b) Whether the appellant's family having appeared and testified before the Ademola Commission, could claim the right of being heard again by the Oyo State Executive Council before taking a decision on the Report F submitted to it by the Ademola Commission, particularly when the decision taken by the Executive Council affected his family's right of rotational succession to Timi of Ede Chieftaincy.

It was not in dispute the Oduniyi Family appeared through its accredited representatives before the Ademola Commission of Inquiry and testified in connection with the Timi of Ede Chieftaincy Declaration. P.W.1 testified in G that regard as follows:

*"I know Alimi Oyederan - the 1st defendant in this case. The 1st defendant was later sued and brought into this case. The previous defendant Bello Akinwoye, originally sued as 1st defendant, is dead now. The late Akinwoye belonged to Laminisa family, Aluni Oyeniran also belongs to H Laminisa family."*

xx

*"In the year 1957, there was a Declaration of custom pertaining to*



B *“The Commission found that the claim by the Laminisa family as the Timi of Ede throne to be equally problematic as the evidence before it suggested that the members of the Laminisa family were Omo-Obas of right. Although in one or two instances their royal descent had been denied, the preponderance of evidence in their favour convinced the commission that Laminisa was the son of Lalemo by a third wife. It was noted that in recent days, the descendants of Laminisa had been prominently placed among the Omo-Obas and, as a matter of fact, the last head of the Omo-Obas hailed from Laminisa family.”*

C *“The Commission noted that their claim to the throne at the enquiry had been based on the argument that Laminisa being a son of Lalemo was also entitled to the Timi throne which the sons of Lalemo were said to have won by defeating the sons of Lamodi. Laminisa role in that confrontation was said to be conditioned by his position as a minor. He could not directly fight but that he carried Agbonran’s armour and thus participated in his own way according*  
D *to this capacity.....”*

E *“To the extent that the Laminisa family did not produce a Timi in that period their claim to the throne as Ome-Oye had consistently failed to gain recognition since the preparation of the declaration of 1957 and it was therefore the view of the Commission that such claim could not succeed.”*

The learned trial Judge, Sijuwade J. after painstaking consideration of the evidence and the authorities cited found as follows:-

F *“There is admission that the Plaintiff’s family not only gave evidence at the said enquiry but was represented. It could not therefore be said that both parties to this dispute were not given the opportunity of being heard at the said enquiry. I am therefore yet to see where the maxim audi alteram partem has been breached, nay, the rules of natural justice. In fact 1977 that is being attacked having regard to the concession of the plaintiff’s counsel on this point, but*  
G *rather the 1979 was the Government’s decision on the Ademola Commission of inquiry.”*

H *“It is that the practice of any authority empowered to resolve a dispute, while acting on the finding of the inquiry to invite the parties to the decision table as to which aspect of the finding is acceptable or not. What is important is to communicate the decision thereon to the parties concerned thereafter. In the circumstance it is safe to hold that the 1979 Amended Declaration relating to the Timi of Ede Chieftaincy is the only registered and approved Declaration notwithstanding the fact that the party complaining*

*has been failed to produce before this court the very Declaration he is so attacking."*

In affirming the findings of fact above, the Court of Appeal opined thus:-

*"All these cases, with due respect, have no bearing on the issue before the lower court and, in the absence of any authority to the contrary, I would also associate myself with the finding of the learned trial Judge that it is not the practice of any authority empowered to resolve a dispute while acting on the finding of an inquiry commission to invite the parties again to a decision table before it decides which aspects of the finding is acceptable or not. There is therefore no basis for the complaint of the appellant as reflected in Issues 1 and 2. The claim of the appellant to be heard again before decision is taken by the Government after a Report of Inquiry in which the appellant was granted right of hearing is not valid and the absence of such audience would not render the Government's action null and void."*

The learned trial Judge then moved to consider whether on the strength of evidence presented and the provisions of the Oyo State Chieftaincy Law referred to, the Oyo State Executive had the power and right to amend the 1957 Timi of Ede Chieftaincy Declaration by adding the name of the respondent's family to wit- Laminisa family and putting it in the second position in the Order of rotational succession to the said Timi of Ede Chieftaincy, as reflected in the 1979 Timi of Ede Chieftaincy Declaration.

The only witness called by the appellant in proof of the Customary Law relating to Timi of Ede Chieftaincy in Alhaji Ibrahim Adeleke Olagunji. I have referred to some relevant portion of his evidence in his judgment where he admitted that Laminisa family had contested for the stool of Timi of Ede at one time or the other, though they never succeeded. He also agreed that Lalemo, his ancestor is also the ancestor of Laminisa family. The Ademola commission also confirmed in its Report that Lalemo is the ancestor of Laminisa family through his third wife.

After a meticulous consideration on the evidence of this only witness, Sijuwade J, made the following findings:-

*"The question now is what is the established custom of the people of Ede regulating the filling of the vacant stool of Time? The question can be examined from two angles. The first angle is whether there is any evidence adduced by the plaintiff as what the custom of Ede is. The 1st P.W. who testified on this issue simply said that Laminisa family is not one of the five Ruling Houses, and since they have failed in the past to get installed a member of their family as a Timi of Ede and also failed to get registered as*



These findings by the learned trial Judge were affirmed by the Court of Appeal in its unanimous judgment wherein Gambari JCA (as he then was) said:-

Section 10 of the Chiefs Law which was quoted in part by the learned counsel for the appellant should be considered as a whole to discover the intendment of the legislature. It is as follows:- B

*“10(1) Where the Executive Council is satisfied that a registered declaration-*

- (a) does not contain a true or sufficient clear statement of the customary law which regulates the selection of a person to be the holder of a recognized chieftaincy; or* C
- (b) does not contain sufficient description of the method of selection of the holder of such a chieftaincy; or*
- (c) contains any error whether as to its form or substance; or*
- (d) is otherwise defective, faulty, or objectionable, having regard to the provisions of this law.* D

*The Executive Council may require the chieftaincy committee which made the declaration to amend such declaration in any respect that it may specify, or to make a new declaration, according as it may consider necessary or desirable in each case.”*

Section 10(1)(i) provides that if a declaration does not contain a true or sufficient clear statement of the customary law regulating the selection of the person to be the holder of the recognized chieftaincy, the Executive Council, provided by Section 25(1) of the Chiefs Law (ibid) had previously set up a commission of inquiry before deciding to carry out Section 25 of the Chiefs Law reads:- E

*“25(1) The Executive Council or the Commissioner, as the case may be, may cause such inquiries to be held at such times and in such places and by such person or persons as it or he may consider necessary or desirable for the purposes of Parts 2 and 3 of law.* F

*(2) The provisions of Section 94 of the Local Government Law shall apply in relation to an inquiry under this Law as they apply in relation to an inquiry under that Law.”* G

*I do not think it is a derogation of the powers conferred on the government by the combined provisions of Sections 10 and 25 of the Chiefs Law for the government to arrive at a decision which is not in conformity with the recommendations contained in the report of the commission of inquiry submitted to the government.”* H

[illegible]

*“He (The appellant) did not even adduce any evidence to suggest that the amendment was made ultra vires the power of the government or that the amendment did not comply with any of the provision of the Chiefs Law or the Constitution so as to render the amendment unconstitutional. All he did was to lead evidence to show that he was not given the right of hearing after the Ademola commission of Inquiry had submitted its report and before the government acted on it..”*

I have myself carefully read through the printed record and the arguments presented by both sides, and have seen no reason to differ from the findings and conclusions reached by both the trial Court and the Court of Appeal in dismissing the appellant's case. The concurrent findings on both issues of fact and law raised in his case are justified as they are and well supported by the evidence. See *Woluchem & Ors v. Gudi & Ors.* (1981) 5 SC 291 and *Folorunsho v. Adeyemi* (1975) NMLR 128.

Both the appellant and the respondents admitted in their respective pleadings, the contents of the 1979 Timi of Ede Chieftaincy Declaration. So in my view and in the present circumstance, the tendering in evidence of the Declaration itself is not necessary. What is admitted does not require any evidence to prove it. See Solana v. Olusanya & Ors. (1975) 6 SC 55 (Pt62) and Okparaeke & Ors. v. Oyesina & Ors. (1977) 5 SC 79 at 85.

The provisions of the Chiefs Law of Oyo State are clear on the role the Executive Council can play in making a chieftaincy Declaration or amending it. See s. 7(2) (b) and s. 25 of the Chiefs Law, 1978. The findings and recommendations contained in the Ademola Commission Report are not to be regarded as judicial decision having binding force on the Oyo State Executive Council, that is the Government. They are findings and recommendations upon which the government may act and in so acting, it is not to be expected that it will adopt them *in-toto*.

The appellant's family was accorded hearing by the Ademola Commission of Inquiry. Their representatives gave evidence on the issue. It is therefore a misconception by the appellant to demand another hearing before the Executive Council when it was considering the Ademola Commission Report, under the pretext of audi alteram partem or fair hearing. The Oyo State Executive was not expected to hear the appellant or any member of his family before deciding on Ademola Commission Report which resulted in amending the 1957 Timi of Ede Chieftaincy Declaration and replacing same by the 1979 Declaration.

The appeal fails and it is dismissed with N1,000.00 costs to each set of respondents. The judgments of the trial Court and the Court of Appeal

are hereby further affirmed.

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**KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Wali J.S.C. I agree with his reasoning and conclusions therein. Obviously the claim by the appellant to be heard again before a decision is taken by the Government after the report of the Commission of Inquiry in which tire appellant and members of his family were granted a right of hearing is preposterous, and the absence of such a hearing would not in my view render any Government's decision thereon unconstitutional, null and void. The appeal lacks merit and it is dismissed with costs as assessed.

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**OGWUEGBU JSC**

I have read the judgment of my learned brother Wali, J.S.C. and I agree with his reasoning and conclusion.

I wish to make a few comments of my own on whether the failure of the Government to hear the appellant before deciding to alter Ademola Commission's finding did not constitute a breach of natural justice which rendered subsequent proceedings null and void.

The contention of the appellant is that before the Government decided to implement the report of Ademola Commission which decision affected his right and that of others, the government ought to have invited them again so as to afford them the opportunity of being heard.

The learned trial judge found on the admission of the plaintiff's family that the family gave evidence and was represented at the Ademola Commission of Inquiry. The appellant's complaint is not against the conduct of the 1977 Inquiry but the Government's decision on it. The learned trial Judge was right when he held that it was not the practice that the Oyo Executive Council should invite the appellant to be heard a second time before it could take a decision on the findings of the Inquiry.

It is true that before a person is subjected to an inquiry affecting his civil rights or property, then he should be told the case against him and be afforded a fair opportunity of answering it. The contention of the learned appellant's counsel was misconceived in that apart from being represented, the appellant and his family were heard at the Inquiry. It would be contrary to all known practice for the Executive Council of Oyo State to hear the appellant a second time before taking a decision one way or the other on the recommendations. That argument is rejected by me. The Government of Oyo State had the power of amend the 1957 Timi of Ede Chieftaincy

Declaration in the manner it did. It acted in accordance with the elementary rules of justice and steps taken were in accordance with the Chiefs Law, Cap. 21 Laws of Oyo State, 1978. The appellant was given reasonable opportunity of presenting his case at the inquiry before a decision was reached by the Executive Council. There was no need for another invitation of the appellant to make another representation.

The appeal fails and it is accordingly dismissed with costs as assessed in the lead judgment.

**C ADIO JSC**

I have had the opportunity of reading, in advance, the judgment just delivered by my learned brother, Wali, J.S.C., and I entirely agree with it. The hearing which the appellant's family had before the Ademola Commission was, in law and in the present circumstances, sufficient and fair. Further, no special circumstances warranting the interference of this court with the concurrent findings of crucial facts were shown. The appeal fails and I too dismiss it. I abide by the order for costs.

**E IGUH JSC**

I have had the privilege of reading in advance, the lead judgment just delivered by my learned brother, Wali, J.S.C. and I entirely agree with him that the plaintiff's appeal is devoid of merit and should be dismissed.

The facts that gave rise to this appeal are uncomplicated and clear.

These are that following disagreements with regard to various Chieftaincy declarations, the Government of Oyo State in 1977 instituted a Commission of inquiry to review disputed Chieftaincy Declarations throughout Oyo State. The appellant and the 1st respondent duly appeared before this Commission of Inquiry and presented their cases in connection with the dispute as regards the 1957 Timi of Ede Chieftaincy Declaration.

At the end of the Inquiry, the Commission duly submitted its recommendations to the State Government which, after close study, were not fully accepted by Government. Government accordingly ordered that the said 1957 Timi of Ede Chieftaincy declaration which hitherto provided for five ruling houses, to wit, Agbonran, Oduniyi Oyefi, Arohanran and Ajeniju should be amended to include a sixth ruling house, namely, Laminisa ruling house. It further named the Laminisa ruling house as number two in the ascension to the stool rotational order which it altered thus - Agboran, Laminisa, Oduniyi; Oyefi, Arohanran and Ajeniji in that

order. The Ede Chieftaincy Committee thereafter amended the said 1957 Timi of Ede Chieftaincy Declaration along the line directed by Government and duly came out with the 1979 Timi of Ede Chieftaincy Declaration.

Following this development, the Oduniyi ruling house which was displaced from the second position in the rotational order to the third being dissatisfied instituted an action at the Osogbo High Court against the respondents challenging the validity of the 1979 Declaration. On the 28th March, 1985, Sijuwade, J. dismissed the plaintiff/appellant's claims in their entirety. The appellant's further appeal to the Court of Appeal, Ibadan Division, was on the 23rd July, 1987 dismissed and the judgment of the trial court upheld. The appellant has now appealed to this court against the decision of the Court of Appeal.

The main question that arises for consideration in this appeal is whether the appellant, having fully presented his case before the Chieftaincy Declaration Commission of Inquiry, which submitted its findings and recommendations to the State Government, was by law entitled to be invited to be heard the second time by the Oyo State Executive Council before Government could validly issue its decisions on the Commission's findings and recommendations. The contention of the appellant is that as an interested party to the dispute, he ought to have been invited and heard by the Oyo State Executive Council before that body took its decisions on the recommendations of the Commission of Inquiry. He argued that failure on the part of the State Executive Council to hear him violated his right to fair hearing.

The respondents, for their part, submitted that the appellant was not only not entitled to be heard by the Executive Council, but that it was unusual to invite parties to a dispute which had first been inquired into by a Commission of Inquiry to the State Executive Council decision meeting before Government decisions on the recommendations of such Commission of Inquiry are taken.

Before considering this issue, I think it will be necessary to reproduce the provisions of sections 10(1) and 25(1) of the Chiefs Law, Cap. 21, Laws of Oyo State of Nigeria, 1978. I will take section 25(1) first this provides as follows-

*"25. (1) The Executive Council or the Commission, as the case may be, may cause such inquiries to be held at such times and in such places, and by such person or persons as it or he may consider necessary or desirable for the purposes of Parts 2 and 3 of this Law."*

It seems to me plain that the Executive Council or the Government of Oyo State was duly empowered under section 25(1) of the Chiefs Law, Cap. 21,

Laws of Oyo State of Nigeria, 1978 to empanel or constitute the relevant Commission of Inquiry in issue which, *inter alia*, reviewed the Timi of Ede Chieftaincy Declaration, 1957. The appellant however claimed that he was offered no opportunity to present his case in breach of the principle of natural justice.

No doubt, the right to fair hearing is a fundamental constitutional right guaranteed by the 1979 Constitution of Nigeria, the breach of which particularly in trials, naturally nullifies such proceedings. A hearing cannot be said to be fair if one of the parties is refused a hearing or denied the opportunity to be heard or present his case. See Gucas v. Jos Int. Breweries Ltd. (1991) 6 N.W.L.R. (Part 199) 614 at 623, Alhaji Mohammed and Anotller v. Lasisi Olawunmi (1990) 2 N.W.L.R. (Part 133) 458 at 485, Oladetoyinbo v. Adegunmi (1990) 6 N.W.L.R. (Part 154) 98, Otapo v. Sunmonu (1987) 2 N.W.L.R. (Part 58) 587 at 605 etc. In the present Commission of Inquiry, however, the plaintiff/appellant and the defendants/respondents, not only gave evidence, they were also legally represented. It cannot therefore be suggested that the appellant or the respondents were either not heard or afforded the opportunity of being heard or presenting their respective cases at the Inquiry. In the circumstance, there can be no question of any breach of the *audi alteram partem* rule arising in this case as claimed by the appellant in so far as the Commission of Inquiry proceedings are concerned.

Turning now to the Government decisions on the recommendations of the Commission of Inquiry, the appellant has argued that failure by the Executive Council to invite him for a second presentation of his case before it is a breach of the principles of natural justice. With profound respect to appellant's learned counsel, I am unable to accept that the Ondo State Executive Council was duty bound to invite the appellant to appear before it for a second round of the presentation of his case or that failure by the said Executive Council to invite him for the purpose aforesaid invalidated the decisions of Government on the Inquiry recommendations. In this regard, attention must be drawn to section 10(1) of the Chiefs Law, Cap. 21, Laws of Oyo State of Nigeria, 1978 which provides thus –

*“Where the Executive Council is satisfied that a registered declaration*

*(a) does not contain a true or sufficient clear statement of the customary law which regulates the selection of a person to be holder of a recognized chieftaincy; or*

*(b) does not contain a sufficient description of the method of selection of the holder of such a chieftaincy; or*

(c) contains any error whether as to its form or substance; or  
 (d) is otherwise defective, faulty, or objectionable, having regard to the provisions of this Law, the Executive Council may require the chieftaincy committee which made the declaration to amend such declaration in any respect that it may specify, or to make a new declaration according as it may consider necessary or desirable in each case.” B

A close study of section 10(1) of the Chiefs Laws shows that the State Executive Council has wide powers to cause or direct an amendment to be made to a registered chieftaincy declaration in my respects as it may consider necessary. Accordingly under the Chiefs Law of Oyo State, 1978, Government has clear jurisdiction to amend a registered chieftaincy declaration in any respect as it may consider appropriate. In my view it will not matter whether or not an Inquiry is first conducted before the amendment is carried out by the Government. See Section 7 (2)(b) of the Chiefs Law. If however Government chooses to constitute an Inquiry to go into a Chieftaincy declaration as provided by Section 25(1) of the Law and make recommendations before it comes out with a final declaration, the report of such Inquiry is not a decision but recommendations upon which Government may act. I think the Oyo State Government at all material times possessed definite powers to accept or reject the recommendations of the commission of Inquiry as, in its opinion, it considered fit and just. In the circumstance, I am inclined to accept that Government acted well within its powers and the law when it amended some aspect of the recommendations of the Commission of Inquiry in a manner it considered appropriate and desirable. C D E

I think it ought to be stressed at the risk of repetition that the report of the Commission of Inquiry was mere recommendations to Government and not decisions. It was the duty of the Government, having gone through and deliberated on the report, to make its final decisions thereupon. The proceedings of the Commission of Inquiry fully contained the respective cases and arguments of both the appellant and the respondents and I cannot accept that it is mandatory on the Oyo State Executive Council to invite the appellant to its deliberations on the report before the Government decisions on the issues can be regarded as valid. In my view, therefore, the main question that has arisen in this appeal for consideration must be resolved against the appellant. F G H

It is for the above and more detailed reasons contained in the lead judgment of my learned brother, Wali, J.S.C. that I, too, dismiss this appeal. I abide by the order for cost therein made.